



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF AIR & WASTE MANAGEMENT
715 GRANTHAM LANE
NEW CASTLE, DELAWARE 19720

OFFICE OF THE
DEPUTY DIRECTOR

TELEPHONE: (302) 323 - 4560

M E M O R A N D U M

TO: Mike Foster, State Solicitor

FROM: June D. MacArthur *JDM*

SUBJECT: Charge Against Standard Chlorine Employee

DATE: October 12, 1988

On October 11, 1988, EPO Bill Hill went to CCP court on a charge against an operator of Standard Chlorine under 7 Delaware Code §6003(a)(2) of discharging a pollutant into surface or ground water without a permit. Two union attorneys, one of them Rubenstein, presented a Motion to Dismiss stating that the operator was a line employee; the company should be charged; the employee is not the one who gets permits.

The facts in this case, presented to Judge Bradley in an offer of proof, are that this employee was well aware of company policy and procedure and disregarded them. Under those circumstances, DNREC has traditionally charged the employee. This, then, represents an unfortunate precedent and leaves us with an enforcement dilemma that urgently needs resolution. This ruling may have wider implications than DNREC and should perhaps be addressed quickly by the Department of Justice. The chemical industry has, in a previous case, indicated their disagreement with the long standing policy of charging individuals where the facts indicate individual liability. One attorney stated to me her belief the statute referring to "person" was unconstitutional but has not furnished me with any research despite my request.

Please let me know as quickly as possible how our enforcement officers should handle this. Thank you.

JDM:Dmt

Enc. Court papers

cc: DOJ Environmental Group

AR200054